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Sun Microsystems, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SUN MICROSYSTEMS, INC.

Plaintiff-Counterclaim Defendant,

v.

NETWORK APPLIANCE, INC.

Defendant-Counterclaim Plaintiff.

CASE NO. C-07-05488-EDL

**JOINT REPORT REGARDING 14
PROPOSED TERMS FOR CLAIM
CONSTRUCTION**

Pursuant to the Court's July 25, 2008, Order Following Case Management Conference, NetApp, Inc. ("NetApp") and Sun Microsystems, Inc. ("Sun") jointly submit this Joint Report Regarding 14 Proposed Terms for Claim Construction.¹ Additionally, pursuant to the Court's Order directing the parties to narrow the number of patents-in-suit to four NetApp patents and five Sun patents, the parties have each identified their respective patents. The NetApp patents for the first wave of this case are United States Patent Nos. 6,574,591, 6,868,417, 7,107,385 and

¹ The Court had requested the parties to submit fifteen priority terms. Because there is no overlap of terms between the parties, the parties agreed to submit an even number of terms.

7,313,720. The Sun patents for the first wave of this case are United States Patent Nos. 5,124,987, 5,430,855, 6,421,787, 5,632,012 and 5,721,937.

In addition to the fourteen terms submitted herewith, the parties note that there are other continuing claim construction disputes concerning the first wave of patents. For example, for each of Sun's five patents and NetApp's four patents, there is at least one disputed claim term that is not included in this Report. In addition the parties dispute the function and/or corresponding structure for a number of means-plus-function terms in the patents-in-suit. The parties believe that the Court may need to address additional claim construction disputes before infringement claims concerning the nine patents in the first wave can proceed through summary judgment or trial.

Below please find the parties' list of fourteen terms, in order of priority.

No.	Term	Party Which Proffers Term	Patent	Statement Of Why Term Needs Construction
1.	"virtual disk(s)/ vdisk(s)"	Sun	United States Patent No. 7,107,385	<p>If Sun's proposed construction is adopted, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims.</p> <p>The accused products do not include this limitation. For example, and without limitation, the accused instrumentality (ZFS) does not maintain a storage object within a file system encapsulated as a lun inode pointing to at least one stream inode that is managed as a regular file emulating a physical disk.</p>
2.	"first available memory space"	NetApp	'987 patent	As used in the claims, this term requires that data can only be written to a logical track (i.e., "memory space") that is entirely

1				empty. The accused products
2				can and do write to logical
3				tracks that already contain data.
4				As a result, if the Court adopts
5				NetApp's construction, NetApp
6				expects there will be a strong
				likelihood of summary judgment
				of non-infringement as to all
				accused products.
7	3.	"increas[ed/ing] a number	Sun	United States
8		of persistent consistency		Patent No.
9		point images"		7,313,720
10				This phrase is indefinite under
11				section 112, ¶ 2 because it is
				unclear and fails to set forth the
				subject matter which applicants
				regard as their invention.
				Because this phrase is in all of
				the asserted independent claims,
				all asserted claims are invalid.
12	4.	"means responsive to said	NetApp	'012 patent
13		reading of said memory		
14		controller for periodically		
15		verifying the integrity of		
16		data currently stored in		
17		each of said identified		
18		dedicated partitions"		
19				As used in the claims, this term
20				requires a structure that runs the
21				disk scrubbing process only on
22				partitions that have been pre-
				selected as "dedicated
				partitions" and never on
				partitions that are "free." The
				accused products contain no
				structure that runs a scrubbing
				process only on partitions that
				have been pre-selected as
				"dedicated partitions." If the
				Court adopts NetApp's
				construction, NetApp expects
				there will be a strong likelihood
				of summary judgment of non-
				infringement as to all accused
				products.
23	5.	"mode operations"/"mode	Sun	United States
24		layer operations"		Patent No.
25				6,868,417
26				These phrases are indefinite
27				under section 112, ¶ 2 because it
28				is unclear and fails to set forth
				the subject matter which
				applicants regard as their
				invention. Because this phrase
				is in the one asserted
				independent claim, all asserted
				claims are invalid.

1					Even if the Court should determine that the claims are not indefinite and instead adopts Sun's alternate construction, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims. The accused products do not include this limitation. For example, and without limitation, the accused instrumentalities do not include operations on inodes, where an inode is a data structure that points to the data blocks of a file and contains status information about the file.
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12	6.	active link between said active nodes	NetApp	'787 patent	As used in the claims, this term requires that each network link have at least two pertinent characteristics: a) they must have either a point-to-point or multi-drop configuration, and b) they must be node-to-node, rather than node-to-disks. However, the network links in NetApp's products do not have these characteristics, because they use separate switches. If the Court adopts NetApp's proposed construction, NetApp expects there will be a strong likelihood of partial summary judgment of non-infringement as to all products.
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23	7.	"file system information (fsinfo) block"	Sun	United States Patent No. 7,313,720	If Sun's proposed construction is adopted, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims.
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28					The accused products do not include this limitation. For example, and without limitation, the accused instrumentality

				(ZFS) does not maintain a block located at a fixed location on disk describing the volume, including the size of the volume, volume level options and language.
8.	means, responsive to the receipt of a stream of data records from said associated data processor, for writing said received stream of data records in available memory space in one of said disk drives	NetApp	'855 patent	As used in the claims, this term requires a structure that responds to the receipt of a stream of data records by writing that stream of data records in a single disk drive. The accused products contain no structure that would require a stream of data records to be stored on a single disk drive. If the Court adopts NetApp's construction, NetApp expects there will be a strong likelihood of summary judgment of non-infringement as to all accused products.
9.	"storage layer underlying the block and file level servers"	Sun	United States Patent No. 6,868,417	<p>If Sun's proposed construction is adopted, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims.</p> <p>The accused products do not include this limitation. For example, and without limitation, the accused instrumentality (ZFS) does not include a storage layer that is the software level immediately below and coupled to block and file level servers and above the management layer.</p>
10.	means for reading data in each of said identified dedicated partitions	NetApp	'012 patent	As used in the claims, this term requires a structure that reads data to commence a scrubbing process only in those partitions that have been previously identified as "dedicated". The accused products contain no

1				structure that reads data only from partitions that have been previously identified as “dedicated.” If the Court adopts NetApp's construction, NetApp expects there will be a strong likelihood of summary judgment of non-infringement as to all accused products.
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7	11.	“swizzl[e/ing] said BN pointers”	Sun	United States Patent No. 6,574,591
8				If Sun’s proposed construction is adopted, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims.
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10				The accused products do not include this limitation. For example, without limitation, the accused instrumentality (ZFS) does not transfer storage blocks and does not remap old BN pointers in storage blocks transferred in the image stream to new BN pointers.
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16	12.	first available one of said logical tracks	NetApp	’987 patent
17				As used in the claims, this term requires that data can only be written to a logical track that is entirely empty. The accused products can and do write to logical tracks that already contain data. As a result, if the Court adopts NetApp’s construction, NetApp expects there will be a strong likelihood of summary judgment of non-infringement as to all accused products.
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24	13.	“performs identical data management operations upon the underlying block level and file level data”	Sun	United States Patent No. 6,868,417
25				If Sun’s proposed construction is adopted, Sun intends to file a motion for summary judgment of non-infringement as to all asserted claims,.
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27				The accused products do not
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1				include this limitation. For
2				example, and without limitation,
3				the accused instrumentality
4				(ZFS) does not provide each and
5				every data management
6				operation that is performed on
7				block level data is performed on
8				file level data and each and
9				every data management
10				operation that is performed on
11				file level data is performed on
12				block level data.
13	14.	communication link	NetApp	'787 patent
14				As used in the claims, this term
15				requires either a point-to-point
16				link or a multi-drop link.
17				NetApp's products use separate
18				switches. If the Court adopts
19				NetApp's proposed
20				construction, NetApp expects
21				there will be a strong likelihood
22				of partial summary judgment of
23				non-infringement as to all
24				products.

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Dated: August 7, 2008

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